

***Remarks***

Reconsideration of remaining claims 32 and 35-40 is respectfully requested.

In the Office action dated June 9, 2005, the Examiner issued a final rejection of claims 32,35-37 and 39 under 35 USC § 102(e) and remaining claims 38 and 40 under 35 USC § 103(a). The Examiner's rejections will be addressed below in the order appearing in the Office action.

***35 USC § 102(e) Rejection - Claims 32, 35-37 and 39***

The Examiner first rejected claims 32, 35-37 and 39 under 35 USC 102(e) as being anticipated by US Patent 6,144,637 (Calvignac et al.). In response, applicants have amended independent claim 32 to more clearly define the subject matter of the present invention as splitting a non-matching session into a plurality of subsessions, with each subsession restricted to have an identical subsession rate. That is, if a session requires 5 subsessions operating at F/4, the F/4 rate would be used. In contrast, the teaching of the Calvignac et al. reference would "split" such a session into two subsessions, one running at F and another at F/4. The inventive can be likened to using the "least common denominator" approach from the study of fractions. The Calvignac et al. reference is concerned with maintaining the highest possible rate for the greatest portion of the data, therefore, using two sub-sessions at F and F/4 satisfies this concern. The present invention, however, is not concerned about "speed", but rather has the intention of "restricting" each of the subsessions to run at an "identical subsession rate".

Based on this explanation, as well as the clarifying amendments to claim 32, applicants assert that independent claim 32, as well as remaining dependent claims 35-37 and 39 are not anticipated by Calvignac et al. Applicants therefore respectfully request the Examiner to reconsider this rejection and find claims 32, 35-37 and 39 to be in condition for allowance.

**35 USC § 103(a) Rejection - Claims 38, 40**

Lastly, the Examiner rejected claims 38 and 40 under 35 USC 103(a) as being unpatentable over Calvignac et al. (as discussed above), in further view of US Patent 6,408,005 (Fan et al.). The Examiner cited Fan et al. as teaching "scheduling for rate shaping utilizing timestamps associated with each queue".

In response, applicants assert that the combination of Calvignac et al. and Fan et al. still lacks the teaching of restricting the use of an "identical" subsession rate for each subsession in the split. Without this teaching, applicants assert that claims 38 and 40 (as depending from amended claim 32) cannot be found to be rendered obvious. Applicants therefore respectfully request the Examiner to reconsider this rejection and find claims 38 and 40 to be in condition for allowance.

If for some reason or other the Examiner does not agree that the case is ready to issue and that an interview or telephone conversation would further the prosecution, the Examiner is invited to contact applicants' attorney at the telephone number listed below.

Respectfully submitted,

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